IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

******

J U D G M E N T

Bhagwat and anr. Vs. Dharam Singh and ors.

S.B.CIVIL REGULAR FIRST APPEAL NO. 91/1988 AGAINST THE JUDGMENT AND DECREE DATED 4.8.88 PASSED BY LEARNED ADDL. DISTRICT JUDGE NO.1, BHARATPUR IN CIVIL SUIT NO.29/80.

Date of Order : Oct.06, 2006.

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr.B.L.Mandhana, for the appellant.
None present for the respondents.

BY THE COURT:

1. Heard learned counsel for the appellants.

2. This appeal is against the judgment & decree dated 4.8.88 of the learned Addl. District Judge No.1, Bharatpur whereby the suit filed by the appellants herein was dismissed by the learned trial court holding that the sale of tenancy rights in agriculture land in favour of the present respondents Dharam Singh, Chandra Bhan, Amar Singh and Yadhuveer Singh by one Shri Roshan S/o. late Sh.Narayan Singh could not be challenged by the plaintiffs as there was a valid partition between various

brothers including the seller in question Roshan S/o late Narayan Singh.

3. While deciding issue no.1, the learned trial court held that on account of compromise between the three brothers in the revenue court, the said compromise between the parties was duly recorded by learned Revenue Court and agriculture land in question was also partitioned and, therefore, the sale of agriculture land in favour of present respondents by Roshan was valid. Secondly, while deciding issue no.3, the learned trial court further held that the plaintiffs also could not claim the right of pre-emption as tenant of agriculture land is not the owner and ownership of the agriculture land vests in the State and relying on the Division Bench Judgment of this court in Sukhdeo Singh and ors. Vs. Sukhdeo Singh and ors. reported in 1980 WLN 212, the Court held that the right of pre-emption is a weak right as it introduces a restriction on the right to hold property and therefore, it cannot be availed of unless it clearly flows from any statute.

4. Learned counsel for the appellants fairly submitted that in view of compromise between the three brothers, out of which one Roshan sold the tenancy rights in

respect of agriculture land in dispute, though the present respondents could not challenge the said compromise which took place before the Revenue Court, there is no justifiable reason or evidence on record to challenge the same. He also fairly conceded that right of pre-emption could not be claimed by the plaintiffs in view of the fact that land in question was agriculture land and no pre-emption right could be claimed in respect of sale by the plaintiffs.

5. Nobody appeared on behalf of the respondents as the counsel Sh.M.I.Khan, who had filed power on behalf of respondents unfortunately has since expired. Be that as it may, having considered the submissions of learned counsel for the appellants, this court is of the view that there is no force in this appeal of the present appellants, one of whom Bhagwat son of Narayan Singh is also said to have already expired on 16.10.91 and in this regard an application has already been filed.

6. In view of compromise between the three brothers, the ground of attack that sale in question of the tenancy right by one brother Roshan S/o. Narayan Singh is not valid since there is no partition between these three brothers, cannot be accepted as the said compromise was

duly recorded before the Revenue Court in which seller Roshan as well as present appellants-plaintiffs were also defendants and, therefore, they are also bound by the said compromise and, therefore, that sale cannot be challenged on that ground. Secondly, the learned counsel for the appellants has rightly submitted that right of pre-emption could not be claimed by the plaintiffs as the land in question was an agriculture land, ownership of which vests in the State and not in the tenant, therefore, upon sale of tenancy right by one party, right of pre-emption could not be claimed by the brothers. Therefore, the learned trial court appears to have correctly denied the right to the plaintiffs following the ratio of Division Bench decision of this court in Sukhdeo's case (supra).

7. Consequently, I find no force in this appeal and same is hereby dismissed. No order as to costs.

(Dr.VINEET KOTHARI)J.

s.rawat/-